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## Case 277 Corrected Partial Order of Determination

Dwight French

*Adjudicator, Klamath Basin General Stream Adjudication*

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**BEFORE THE DIRECTOR  
OF THE WATER RESOURCES DEPARTMENT  
OF THE STATE OF OREGON**

**KLAMATH BASIN GENERAL STREAM ADJUDICATION**

|                                 |   |                                        |
|---------------------------------|---|----------------------------------------|
| In the Matter of the Claim of   | ) | CORRECTED PARTIAL ORDER OF             |
| THE KLAMATH TRIBES AND THE      | ) | DETERMINATION                          |
| UNITED STATES DEPARTMENT OF     | ) |                                        |
| INTERIOR, BUREAU OF INDIAN      | ) |                                        |
| AFFAIRS AS TRUSTEE ON BEHALF OF | ) | Water Right Claims 625 – 640           |
| THE KLAMATH TRIBES              | ) | (Williamson River and its tributaries) |
|                                 | ) |                                        |

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The GENERAL FINDINGS OF FACT of the FINAL ORDER OF DETERMINATION is incorporated as if set forth fully herein.

**A. FINDINGS OF FACT AND DESCRIPTION OF MODIFICATIONS  
TO THE PROPOSED ORDER**

1. Claims 625 – 640, and that Portion of Claim 612 pertaining to the Williamson River and its tributaries, (Claimants: THE KLAMATH TRIBES; AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON BEHALF OF THE KLAMATH TRIBES (BIA)) and their associated contests<sup>1</sup> were referred to the Office of Administrative Hearings for a contested case hearing which was designated as Case 277.
2. Claim 612 was filed by the Klamath Tribes. It is a composite claim that incorporates by reference each of the United States Bureau of Indian Affairs' claims based on the hunting, trapping, fishing, and gathering purposes of the Klamath Treaty of 1864. The portion of Claim 612 pertaining to the Williamson River incorporates by reference BIA Claims 625 – 640.

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<sup>1</sup> Claim 625: 2807, 3024, 3125, 3327, 3886, 4015; Claim 626: 1776, 3025, 3328, 3887, 4016; Claim 627: 1777, 3026, 3329, 3888, 4017; Claim 628: 1778, 3027, 3330, 3889, 4018; Claim 629: 1779, 3028, 3331, 3890, 4019; Claim 630: 1780, 3029, 3332, 3891, 4020; Claim 631: 1781, 3030, 3333, 3892, 4021; Claim 632: 1782, 3031, 3334, 3893, 4022; Claim 633: 1783, 3032, 3335, 3894, 4023; Claim 634: 3033, 3336, 3895, 4024; Claim 635: 3034, 3126, 3337, 3896, 4025; Claim 636: 3035, 3127, 3338, 3897, 4026; Claim 637: 3036, 3339, 3898, 4027; Claim 638: 3037, 3340, 3899, 4028; Claim 639: 3038, 3341, 3900, 4029; Claim 640: 2786, 3039, 3342, 3901, 4030; Claim 612: 1773, 2786, 2802, 3016, 3119, 3249, 3314, 3644, 4002.  
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3. The Office of Administrative Hearings conducted contested case proceedings and ultimately issued a PROPOSED ORDER (Proposed Order) for Claims 625 – 640, and that Portion of Claim 612 pertaining to the Williamson River and its tributaries, on December 1, 2011.
4. Exceptions were filed to the Proposed Order within the exception filing deadline by (1) the Oregon Water Resources Department, (2) the Upper Basin Contestants, and (3) John M. Mosby and Marilyn Mosby. Responses to exceptions were timely filed by the United States and the Klamath Tribes.
5. The exceptions filed to the Proposed Order along with opposition to the exceptions have been reviewed and considered in conjunction with the entire record for Claims 625-640 and that Portion of Claim 612 pertaining to the Williamson River and its tributaries. The exceptions are found to be persuasive in part, and therefore, modifications are made to the Proposed Order as described in Sections A.8, A.9, and A.10, below.
6. For administrative convenience, OWRD has addressed Claim 612 in a separate Partial Order of Determination for Claim 612. Section B.2 of this Partial Order of Determination makes a legal conclusion about the relationship between Claim 612 and the United States' Claims 625 – 640, and the ownership of the water rights that are recognized in these claims.
7. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
  - a. The "Procedural History" is adopted in its entirety.
  - b. The "Evidentiary Rulings" is adopted in its entirety.
  - c. The "Expert Testimony" is adopted in its entirety.
  - d. The "Issues" is adopted in its entirety.
  - e. The "Findings of Fact" is adopted with modifications, as set forth in Section A.8, below.
  - f. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.9, below.
  - g. The "Opinion" is adopted with modifications, as set forth in Section A.10, below.
  - h. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claims 625-640. The Order is presented in a format standardized by OWRD. Consistent with Sections A.8, A.9 and A.10, below, the outcome of the Order has been modified (1) as to the reach boundary for Claim 631, (2) to correct the descriptions of the lower reach boundary for Claim 627 and the upper reach boundary for Claim 633, and (3) to recognize rights for Claims 635 and 636 for only those portions of claimed reaches that lie within the former reservation boundary.



8. **Findings of Fact.** Within the Proposed Order's "Findings of Fact" section, Findings of Facts 24, 37, 42, 49, 57, 59, 62 and 64 are modified as follows (additions are shown in "underline" text, deletions are shown in "~~strikethrough~~" text):

a. *Modifications to Finding of Fact 24:*

24. Claim 627 identifies the upper and lower reach boundaries longitude and latitude coordinates as well as township-range designations. The township-range description for the upper reach boundary is identified as T 34S, R 7E, S 9, SE¼ NE¼, distance from NW corner S 1° 55' 54" E, 1937.7 ft. The lower reach boundary is identified as T 35S, R 7E, S 3, NW¼ NW¼, distance from NW corner S 61° 20' 14" E, ~~337.3~~ 997.3 ft. (OWRD Ex. 5 at 16.)

**Reason for Modification:** The Proposed Order contains an error in the description of the lower reach boundary for Claim 627.

b. *Modifications to Finding of Fact 37:*

37. Claim 630 was withdrawn by the United States (See Flood Frequency Analysis 277-US-219 at 2.) Monthly Physical Habitat flow values for Williamson River Physical Habitat Claims and Monthly Riparian Habitat flow values for Williamson River Habitat Claims were omitted for Claim Reach 630 from Table 1 and Table 2, respectively. (Claimants' Joint Opening Post-Hearing Brief at 44 and 58-59.) Claim 630 was omitted from the following: (1) the map showing Williamson River claims for Case 277 (Ex. 277-US-200 at 15, Figure 2.); (2) Table 2 (Ex. 277-US-200 at 41); (3) Table 3 showing OWRD median flow estimates (Ex 277-US-200); (4) Table 5 showing maximum and minimum undepleted median month flows, and ratio by claim reach (277-US-200 at 52); (5) Table 10 showing summary of hydrologic estimates made in support of claims for Case 277 (Ex 277-US-200 at 74); (6) Table 2 showing Riparian Habitat Claims base flows from the Williamson Basin subbasin (Ex 277-US-300 at 100-101); (6) Table 3 showing Riparian Habitat Claim high flows from the Williamson subbasin. (Ex 277-US-300 at 102); (7) Item 70 describing each updated Riparian Habitat Claim in the Williamson River subbasin (Ex 277-US-300 at 103-147); (8) Figure VII-4 showing the map for the location of Physical Habitat claims in the Williamson River subbasin (Ex 277-US-400 at VII-12); (9) the section describing



~~the stream reach associated with each claim (277-US-400 at IX-625-3 through IX-640-14). In December 2009, Claimants filed their written direct testimony and exhibits. Claimants' evidence reflected downward adjustments of Claim 630. These downward adjustments resulted from basin wide stream flow estimates developed by OWERD between 2000 and 2004 as well as basin wide studies of the physical and riparian habitats, conducted by BIA's experts. The updated claim was capped at the lesser of 66 percent of the median stream flow or the 1999 claim, whichever was lower. (Exs. 277 US 200, 277 US 220, 277 US 300, 277 US 322, 277 US 400, and 277 US 465; test of Chapin and Ramey.)~~

**Reason for Modification:** The ALJ's finding is not supported by a preponderance of evidence on the record.

c. *Modifications to Finding of Fact 42:*

42. The written direct testimony of Dr. Dudley Reiser (277-US-400), in support of the updated claims, included a map depicting the lower boundary reach of Claim 631 at Klamath Marsh, at the upper reach boundary for Claim 623.<sup>2</sup> The lower reach boundary depicted in Dr. Reiser's direct testimony corresponds with T 30S, R 10E, S 19, SW¼ NE¼ (latitude 40° 42' 57" 34.35"; longitude 121° 34' 36.98"). (Ex 277-US-400 at IX-631-3; See also, Claimants' Joint Reply Brief at 38.) This constitutes an expansion of the original claim. The appropriate lower reach boundary for Claim 631 is the boundary depicted in the map accompanying the claim, located at S 16, NW¼ NW¼ (latitude 42° 58' 31.43"; longitude 121° 32' 35.82"). (OWRD Ex. 9 at 19, 25.)

**Reason for Modification:** To make a finding concerning the appropriate lower reach boundary based on an application of the facts in the record to the correct legal standard for claim amendments.

d. *Modifications to Finding of Fact 49:*

49. Claim 633 identifies the upper and lower reach boundaries' longitude and latitude coordinates as well as township-range designations. The township-range description for the upper reach boundaries is identified as T 33S, R 11E, S 9 4,

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<sup>2</sup> Claims 615 and 623 claim water rights in "Klamath Marsh and tributaries flowing into the marsh \*\*\*." (OWRD Ex. 60 at 3.) These claims are the subject of Case 284 and not addressed further in this order.  
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CLAIMS 625-640 (Williamson River and its tributaries)

NE<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub>, distance from NW corner, S 89° 4'49" E, 2,626 ft. SW corner N 58° 19'13" E, 1,206.9 ft. The lower reach boundary is identified as T 32S, R 11E, S 17, NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, distance from SW corner N 38° 28'32" E, 3,176 ft. (OWRD Ex. 11 at 16.)

**Reason for Modification:** The Proposed Order contains an error in the description of the upper reach boundary for Claim 633.

e. *Modifications to Finding of Fact 57:*

57. Claim 635 identifies the upper and lower reach boundaries' longitude and latitude coordinates as well as township-range designations. The township-range description for the upper reach boundary is identified as T 31S, R 7.5E, S 6, NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, distance from SW corner N 49° 19' 59" E, 2,077.8 ft. (OWRD Ex. 13 at 23.) The lower reach boundary is identified as T 31S, R 8E, S 18, SW<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>, distance from SE corner S 89° 57' 32" W, 2,412 ft. (Stipulation). A portion of the Claim 635 lies outside the former reservation boundary. The upper reach boundary is therefore limited to within the reservation boundary, which is located at the western edge of the SE<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub>, Section 31, T 31 S, R 7 E, W.M., distance from NE corner S 37° 15' 2" W, 2551 ft.<sup>3</sup>

**Reason for Modification:** To identify the portion of the claimed reach that lies outside the boundary of the former reservation.

f. *Modifications to Finding of Fact 59:*

59. Sand Creek originates outside the boundaries of the former reservation, flows onto the reservation and into Klamath Marsh. The portion of Claim 635 upstream of approximately River Mile 8 lies outside (west of) the former reservation boundary. Claim 635 claims instream flows within the 18-mile stretch of Sand Creek from the point of origination near Crater Lake until it terminates at the marsh. (Exs. 277-US-400 and 277-US-300, See, Fig. 21.)

**Reason for Modification:** To identify the portion of the claimed reach that lies outside the boundary of the former reservation.

<sup>3</sup> Bearing and distance measurements by OWRD in UTM 10, NAD 27  
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g. *Modifications to Finding of Fact 62:*

62. Claim 636 identifies the upper and lower reach boundaries' longitude and latitude coordinates as well as township-range designations. The township-range description for the upper reach boundary is identified as T 31S, R 7.5E, S 14, NW¼, NE¼, distance from NE corner S 86° 26' 43" W, 2,547.9 ft. (OWRD Ex. 14 at 18.) The lower reach boundary is identified as T 31S, R 7E, S 1, NE¼, SE¼, distance from SE corner N 17° 31' 36" W, 2,591 ft. (Stipulation.) A portion of the Claim 636 lies outside the former reservation boundary. The upper reach boundary is therefore limited to within the reservation boundary, located at the western edge of the SE¼ NE¼, Section 18, T 31 S, R 7 E, W.M., distance from NE corner S 32° 37' 18" W, 3080 ft.<sup>4</sup>

**Reason for Modification:** To identify the portion of the claimed reach that lies outside the boundary of the former reservation.

h. *Modifications to Finding of Fact 64:*

64. Scott Creek also originates outside the boundaries of the former reservation. Like Sand Creek, Scott Creek flows onto the reservation and into Klamath Marsh. The portion of Claim 636 upstream of approximately River Mile 7.1 lies outside (west of) the former reservation boundary. Claim 636 claims instream flows within the 10-mile stretch of Scott Creek from the point of origination until it terminates at the marsh. (Exs. 277-US-400 and 277-US-300, See, Fig. 22.)

**Reason for Modification:** To identify the portion of the claimed reach that lies outside the boundary of the former reservation.

9. **Conclusions of Law.** Within the Proposed Order's "Conclusions of Law" section, Conclusion of Law 2 is modified as follows (additions are shown in underline text):

2. Claimants are not entitled to claim instream flows outside the boundaries of the former reservation in order to fulfill the purposes of the reservation.

<sup>4</sup> Bearing and distance measurements were calculated by OWRD in UTM 10, NAD 27  
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**Reasons for Modifications:** To make the Conclusions of Law consistent with the Department's legal determinations.

10. **Opinion.** The Proposed Order's "Opinion" section is modified as described herein.

- a. *The final three paragraphs of Section III.2 (Proposed Order at 37-38) are replaced in their entirety as follows:*

From a reading of the statutes, it appears clear that, as relevant here, the purposes of the claim filing requirements are to obtain sufficient information to allow OWRD to determine the water rights claimed and to allow interested parties to contest a claim if it appears such claim may affect their own water rights. OWRD's treatment of conflicting information in the documents, discussed above, tends to substantiate this interpretation. Accordingly, the question to be resolved is whether the information provided with the claim provided sufficient information to put potential contestants on notice that Claimants might intend to claim the greater quantity of water. OWRD concludes that it did not.

The United States Amended Claim 631 included two pieces of information about the lower boundary of the reach. The first is a map, which identifies a point on the Williamson River as the lower reach boundary. The lower reach boundary depicted on the map is approximately two miles northeast of the boundary of the Klamath Marsh National Wildlife Refuge. The second is a written description of the reach as extending from "Deep Creek to Klamath Marsh."

OWRD concludes that the written description does not provide a reasonably identifiable alternative to the lower reach boundary depicted on the map. In other words, the written description is insufficient to put prospective contestants on notice that the United States intended to claim a longer reach that is identified in the map.

The "Klamath Marsh" is a geographic feature. It is not reasonably possible to determine the boundaries of this feature from the claim information submitted by the United States. A prospective contestant could not, therefore, reasonably be considered to be on notice that the United States intended to claim a lower reach boundary other than the boundary depicted on the United States' claim map.

The United States contends that the term "Klamath Marsh" must necessarily refer to the Klamath Marsh National Wildlife Refuge ("Refuge"), the boundaries of which are identifiable in information submitted with the claim. But the boundaries of the Refuge are political boundaries, and they are not necessarily coextensive with the boundaries of the geographic feature. When the United States used the term "Klamath Marsh" in describing a boundary of their claim, it is unclear whether they intended to refer to the Refuge boundary or the geographic feature (and if the geographic feature, it is unclear precisely where they believed that geographic feature lies). Given that the Claimants bear the burden of establishing the boundaries of their claim, OWRD cannot conclude that



the term “Klamath Marsh” is sufficiently identifiable as to pose a reasonable alternative to the clearly mapped location provided in the claim.

The lower reach boundary for Claim 631 is therefore limited to the point identified on the United States’ claim map.

b. *Section VII (Proposed Order at 45-46) is replaced in its entirety as follows:*

Claimants filed claims for instream water rights for two streams that originate and travel for some distance outside the former reservation boundaries before flowing onto the reservation and into Klamath Marsh. Scott and Sand Creeks (Claim 635 and 636, respectively) begin several miles west of the former reservation. Considerable portions of each stream lies outside former reservation land. Claimants assert these off-reservation portions of Sand and Scott Creeks are necessary to preservation of certain treaty species of fish, namely redband trout. OWRD and Contestants each contend that Claimants are not entitled to claim water rights outside the boundaries of the former reservation. For the reasons described below, the off-reservation portions of Claims 635 and 636 must be denied.

**A. The Claimants’ claims for off-reservation water rights are not supported by the underlying principles of the federal reserved water right doctrine**

As is described in detail below, there is no federal precedent in support of off-reservation federal reserved water rights. Nor is there any basis for expanding the federal reserved water right doctrine to include implied off-reservation federal reserved water rights.

The federal reserved water right doctrine is judge-made law. It determines whether a court should imply that the federal government intended to create a water right when reserving a specific piece of land for a specific purpose, notwithstanding the fact that neither Congress nor the executive branch explicitly created a water right to benefit that land.

Recognizing the origins of the doctrine, the United States Supreme Court has found that federal reserved water right claims require “careful examination,” both “because the reservation [of water] is implied, rather than expressed” and because, “[w]here Congress has expressly addressed the question of whether federal entities must abide by state water law, it has almost invariably deferred to the state law.” *United States v. New Mexico*, 438 US 696, 701-02 (1978).

Allowing implied off-reservation federal reserved water rights would be at odds with this admonition. Recognition of such rights would give the implied right in water a greater scope than the explicit right in land. A federal reservation of land has an explicitly defined, geographically limited scope. The primary purposes of that reservation of land apply only within the reservation’s explicitly defined boundaries. Recognition of implied off-reservation federal reserved water rights would allow the *implied* exercise of federal authority (the reservation of



water) to greatly exceed the *explicit* exercise of federal authority, by permitting an implied reservation of water that could greatly exceed the boundaries of the explicit reservation of land.

This is not merely a theoretical concern. An implied reservation of water to benefit a reservation of land for the harvest of anadromous fish – no matter how small the reservation of land or how significant the fishery – could result in implied water rights ranging from the ocean up to the headwaters of all of a river's tributaries. So construed, the judicially created federal reserved water rights doctrine would completely undermine Congress's historical deference to state water law.

The implied creation of a water right potentially far greater in geographic scope than the explicit reservation of land does not square with the *New Mexico* court's directive to treat the federal reserved water right doctrine conservatively. OWRD therefore concludes that it is inappropriate to so dramatically expand the federal reserved water right doctrine.

**B. The cases relied on in support of an off-reservation water right are inapplicable**

None of the cases cited by the Claimants in support of off-reservation water rights to support on-reservation hunting and fishing rights are applicable. The cited cases are not determinative of the issue at hand. Nor do they provide persuasive support for the Claimants' position. The Claimants cite to *Arizona v. California*, 376 US 340 (1964); *Kittitas Reclamation Dist. v. Sunnyside Valley Irrig. Dist.*, 763 F.2d 1032, 1033-35 (9th Cir. 1985); *Washington Dep't of Ecology v. Acquavella*, No. 77-2-01484-5, Memorandum Opinion: Treaty Reserved Water Rights at Usual and Accustomed Fishing Places (Wash. Super. Ct. Sept. 1, 1994); and *United States v. Adair*, 723 F2d 1394 (9<sup>th</sup> Cir 1983) (*Adair II*) as support for their position. OWRD addresses each of these cases below.

The Claimants characterize *Arizona*, 376 US at 344-45, as having awarded "reserved water rights from the Colorado River for the Cocopah Reservation, even though the river lies approximately two miles outside reservation boundaries." Claimants' Joint Post-Hearing Response Brief at 53 (emphasis in original; internal citations omitted). The Claimants argue that *Arizona* was premised on the Cocopah Reservation being two miles from the Colorado River. On the contrary, the relative locations of the Cocopah Reservation and the Colorado River, and the effect the relative locations might have on an award of water rights, was at not at issue in *Arizona*. The decision does not even mention the relative locations of the Cocopah Reservation and the river. Under these circumstances, the decision could not have been premised on the Colorado River being off the reservation.

As the Claimants acknowledge, the boundaries of the Cocopah Reservation were in dispute, although not in the *Arizona* proceeding, at the time of the *Arizona* decision. A 1972 Opinion of the Solicitor of the Department of the Interior states:



“Over the years there have been considerable differences of opinion regarding interpretation of the Executive Order” that created the Cocopah Reservation. Opinions of the Solicitor, page 2051, December 21, 1972 (“1972 Opinion”) Specifically, the dispute pertained to whether the Executive Order intended to include lands bordering the Colorado River within the Reservation. *Id.* The 1972 Opinion reversed an earlier opinion issued by the Solicitor of the Interior, and concluded that the “reservation as created by the Executive Order...extended to the Colorado River.” *Id.* at 2052. Given that the issue of awarding reserved water rights in off-reservation bodies of water was not in dispute in *Arizona*, and that the reservation boundaries were uncertain at the time of the *Arizona* decision,<sup>5</sup> *Arizona* provides no support for the Claimants’ position.

The Claimants next cite to a ruling issued by a federal district court judge in the state of Washington, which was affirmed by the Ninth Circuit Court of Appeals in *Kittitas Reclamation Dist. v. Sunnyside Valley Irrig. Dist.*, 763 F.2d 1032, 1033-35 (9th Cir. 1985). The district court judge’s ruling required the Yakima Irrigation Project to maintain a certain quantity of water at a location outside of the primary Yakama Reservation boundaries to support the Yakama Nation’s treaty fishing rights. Civ. No. 21, Instructions to the Watermaster (E.D. Wash. Oct. 31, 1980) (attached as Attachment C to the Affidavit of David W. Harder in Support of the United States’ and Klamath Tribes’ Joint Opening Post-Hearing Brief) (referred to herein as “Instructions to Watermaster”).

The treaty establishing the Yakama Reservation is different from the Klamath Treaty in a critical respect. Unlike the Klamath Treaty, the Yakama treaty reserved fishing rights for the Yakama Nation at “usual and accustomed [fishing] places” outside the primary boundaries of the Yakama Reservation. *Kittitas*, 763 F.2d at 1033. In other words, the Yakama hold rights to use land for a specific purpose at locations outside the primary reservation boundaries. The district court ruling specifically states that the reach of river protected by the ruling “is a part of a fishery reserved to the Yakama Indian Nation and its members pursuant to its treaty with the United States....” Instructions to the Watermaster at 2. The water rights affirmed by *Kittitas* are therefore based on a specific, underlying fishing right (a right in land at the “usual and accustomed fishing places”) for which there is no equivalent in the Klamath Treaty.

In addition, the *Kittitas* cases did not involve the adjudication of the Yakima Nation’s federal reserved water rights (or the adjudication of any other water rights). The Ninth Circuit stated specifically that the parties to the proceeding “intended no general adjudication of water rights.” *Kittitas Reclamation Dist. v. Sunnyside Valley Irrigation Dist.*, 763 F.2d 1032, 1035 (1985).

Finally, the *Kittitas* cases do not engage in any analysis of the federal reserved water rights doctrine that supports an expansion of the doctrine to

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<sup>5</sup> While the view of the United States Department of Interior Solicitor at the time of the *Arizona* decision was that the Colorado River was not on and did not border the Cocopah Reservation, the 1972 Opinion makes clear that the Solicitor’s view at the time of the *Arizona* decision was not universally shared.



include off-reservation water rights at locations that do not constitute “usual and accustomed [fishing] places.” *Kittitas* provides no support for the Claimants’ position.

The Claimants also cite *Washington Dep’t of Ecology v. Acquavella*, No. 77-2-01484-5, Memorandum Opinion: Treaty Reserved Water Rights at Usual and Accustomed Fishing Places (Wash. Super. Ct. Sept. 1, 1994) (OWRD Ex. 2 at 717-731) as having awarded off-reservation water rights. *Acquavella* is a decision of a Washington state superior court, and therefore does not serve as applicable precedent in this proceeding.

Nor does *Acquavella* serve as persuasive authority. *Acquavella* pertains to the treaty establishing the Yakama Reservation, which is different from the Klamath Treaty in a critical respect. Unlike the Klamath Treaty, the Yakama treaty reserved fishing rights for the Yakama Nation at “usual and accustomed [fishing] places” outside the primary boundaries of the Yakama Reservation. OWRD Ex. 2 at 726, 731. In other words, the Yakama hold rights to use land for a specific purpose at locations outside the primary reservation boundaries. The court thus addresses the question of water rights at locations where the Yakama Nation also had treaty fishing rights. *Acquavella* does not engage in any analysis of the federal reserved water rights doctrine that supports an expansion of the doctrine to include off-reservation water rights at locations that do not constitute “usual and accustomed [fishing] places.” *Acquavella* provides no support for the Claimants’ position.

Finally, the Claimants’ cite to language in *United States v. Adair*, 723 F2d 1394 (9<sup>th</sup> Cir 1983) (*Adair II*), that describes the process for determining the primary purposes of an Indian reservation, and the canons of Indian treaty interpretation. Reliance on *Adair II* misses the mark. The question posed by the Claimants’ off-reservation water right claim is whether the federal reserved water right doctrine is broad enough to permit implied water rights *under any circumstances* at locations geographically unconnected to (i.e., not either bordering or within) a federal reservation of land. If the doctrine is not so broad (and OWRD concludes that it is not), then the purposes of a particular federal reservation, or the documents creating a particular federal reservation, are immaterial.

The Claimants repeatedly cite to portions of *Adair II* that describe the determination of the *purposes* of the reservation. See, e.g., *Adair II*, 723 F2d at 1408, n13. It is in this context, and this context only, that the *Adair II* court treats Indian reservations differently than other federal reservations of land. As the *Adair II* court explained, determination of the purposes of the reservation is based on an interpretation of the treaty creating the reservation. In this context, canons of Indian treaty construction may apply. But the purpose of the reservation is only one element of a federal reserved water right, and it is an element that speaks to the character of the land actually reserved. It does not address the effects of a reservation on far-flung locales. The *Adair II* court’s discussion of the purpose of



a reservation is therefore inapplicable to the question of off-reservation water rights.

In conclusion, the Claimants' claims for off-reservation water rights are not supported by either the underlying principles of the federal reserved water right doctrine or by the case law. The off-reservation portions of Claims 635 and 636 are therefore denied.

**Reasons for Modification:** To make the Opinion section consistent with the Department's legal conclusions, and to describe the legal reasoning behind certain of the Department's legal conclusions; to describe the Department's reasoning for finding that the lower reach boundary for Claim 631 that is identified in the Claimants' testimony constitutes an impermissible claim amendment.

## **B. DETERMINATION**

1. The Proposed Order is adopted and incorporated, with modifications, into this Partial Order of Determination as follows:
  - a. The "Procedural History" is adopted in its entirety.
  - b. The "Evidentiary Rulings" is adopted in its entirety.
  - c. The "Expert Testimony" is adopted in its entirety.
  - d. The "Issues" is adopted in its entirety.
  - e. The "Findings of Fact" is adopted with modifications, as set forth in Section A.8, above.
  - f. The "Conclusions of Law" is adopted with modifications, as set forth in Section A.9, above.
  - g. The "Opinion" is adopted with modifications, as set forth in Section A.10, above.
  - h. The "Order" is replaced in its entirety by the Water Right Claim Description as set forth in Section B of this Partial Order of Determination for Claims 625-640. The Order is presented in a format standardized by OWRD. Consistent with Sections A.8, A.9 and A.10, above, the outcome of the Order has been modified (1) as to the reach boundary for Claim 631, (2) to correct the descriptions of the lower reach boundary for Claim 627 and the upper reach boundary for Claim 633, and (3) to recognize rights for Claims 635 and 636 for only those portions of claimed reaches that lie within the former reservation boundary.
2. Both the United States and the Klamath Tribes filed claims based on the hunting, trapping, fishing and gathering purposes of the Klamath Treaty of 1864. The Klamath Tribes' Claim 612 incorporates the United States' claims in this case by reference. The Klamath Tribes' claims are duplicative of the United States' claims, not additive. The United States holds the rights recognized herein in trust for the Klamath Tribes. *Colorado River Water Conservation Dist. v. United States*, 424 US 800, 810 (1976). As a result, Claim 612 is denied. Claim 612 is addressed in a separate Partial Order of Determination for Claim 612, and the United States' Claims 625 – 640 are determined in this Partial Order of Determination for Claims 625 – 640.

3. Based upon the file and record herein, including withdrawal of Claim 630, IT IS ORDERED that Claim 630 is denied and is of no force or effect.
4. Based on the file and record herein, IT IS ORDERED that Claims 625 - 629 and 631 - 640, are approved as set forth in the following Water Right Claim Description.



**CLAIM NO. 625**

FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:**

CLAIM # 625, PAGES 31-32, MYLAR MAPS FILED OCTOBER 1, 1999

**CLAIMANTS:** THE KLAMATH TRIBES  
PO BOX 436  
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON  
BEHALF OF THE KLAMATH TRIBES  
911 NE 11<sup>TH</sup> AVE  
PORTLAND, OR 97232

**SOURCE OF WATER:** The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

**PURPOSE or USE:**

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING,  
TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

**PERIODS OF ALLOWED USE AND RATES:**

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE  
STREAM REACH (OWRD WAB ID# 70826)<sup>6</sup> TO PROTECT THE FOLLOWING FLOWS  
THROUGHOUT THE REACH:

**PHYSICAL HABITAT FLOWS**

| MONTH     | Physical Habitat Flow <sup>a</sup> (CFS) | Conditional Physical<br>Habitat Flow <sup>b</sup> (CFS) |
|-----------|------------------------------------------|---------------------------------------------------------|
| January   | 650                                      | 650                                                     |
| February  | 650                                      | 650                                                     |
| March     | 650                                      | 650                                                     |
| April     | 873                                      | 873                                                     |
| May       | 873                                      | 873                                                     |
| June      | 873                                      | 873                                                     |
| July      | 650                                      | 650                                                     |
| August    | 620                                      | 620                                                     |
| September | 650                                      | 650                                                     |
| October   | 650                                      | 650                                                     |
| November  | 650                                      | 650                                                     |
| December  | 650                                      | 650                                                     |

<sup>a</sup> Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species existing in the upper Klamath Basin today. (Ex. 277-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

<sup>6</sup> References to the Water Availability Basin (WAB) for each claim (625-640) are included solely for OWRD's convenience.

- <sup>b</sup> Conditional Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for all target species of the upper Klamath Basin, and become effective only upon the re-introduction of anadromous fish. (Ex. 277-US-400 at II-8.)

#### **RIPARIAN HABITAT FLOWS<sup>c</sup>**

| MONTH     | Riparian Habitat Base Flow (CFS) | Riparian Habitat High (Flood) Flow |                |
|-----------|----------------------------------|------------------------------------|----------------|
|           |                                  | Trigger Flow (CFS)                 | Cap Flow (CFS) |
| January   | --                               | --                                 | --             |
| February  | --                               | --                                 | --             |
| March     | 1100                             | 2180                               | 4190           |
| April     | 1440                             | 2180                               | 4190           |
| May       | 1300                             | 2180                               | 4190           |
| June      | 805                              | --                                 | --             |
| July      | 472                              | --                                 | --             |
| August    | 409                              | --                                 | --             |
| September | 433                              | --                                 | --             |
| October   | 488                              | --                                 | --             |
| November  | 605                              | --                                 | --             |
| December  | --                               | --                                 | --             |

- <sup>c</sup> Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 277-US-300 at 54.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 277-US-300 at 82-83.)

**DATE OF PRIORITY: TIME IMMEMORIAL**

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

| WILLIAMSON RIVER FROM HIGHWAY 97 TO UPPER KLAMATH LAKE |      |       |     |     |       |                                                    |                                |
|--------------------------------------------------------|------|-------|-----|-----|-------|----------------------------------------------------|--------------------------------|
|                                                        | Twp  | Rng   | Mer | Sec | Q-Q   | Coordinate Description (NAD 27)                    | Approx River Mile <sup>7</sup> |
| Upper Reach Boundary                                   | 35 S | 7 E   | WM  | 21  | SWNE  | SOUTH 47° 12' 29" WEST, 3030.7 FEET FROM NE CORNER | 7                              |
| Lower Reach Boundary                                   | 36 S | 7.5 E | WM  | 11  | SE NE | NORTH 37° 22' 51" WEST, 413.1 FEET FROM SE CORNER  | 0                              |

<sup>7</sup> References to the approximate River Mile for the upper and lower reach boundaries of each claim (625-640) are included solely for OWRD's convenience.



**CLAIM NO. 626**

FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:** CLAIM # 626, PAGE 15, MYLAR MAP FILED OCTOBER 1, 1999**CLAIMANTS:** THE KLAMATH TRIBES  
PO BOX 436  
CHILOQUIN, OR 97624UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON  
BEHALF OF THE KLAMATH TRIBES  
911 NE 11<sup>TH</sup> AVE  
PORTLAND, OR 97232**SOURCE OF WATER:** The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE**PURPOSE or USE:**INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING,  
TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND**PERIODS OF ALLOWED USE AND RATES:**THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE  
STREAM REACH (OWRD WAB ID# 31420125) TO PROTECT THE FOLLOWING FLOWS  
THROUGHOUT THE REACH:**PHYSICAL HABITAT FLOWS**

| MONTH     | Physical Habitat Flow <sup>a</sup> (CFS) | Conditional Physical<br>Habitat Flow <sup>b</sup> (CFS) |
|-----------|------------------------------------------|---------------------------------------------------------|
| January   | 650                                      | 650                                                     |
| February  | 650                                      | 650                                                     |
| March     | 650                                      | 650                                                     |
| April     | 700                                      | 700                                                     |
| May       | 700                                      | 700                                                     |
| June      | 700                                      | 700                                                     |
| July      | 650                                      | 650                                                     |
| August    | 620                                      | 620                                                     |
| September | 650                                      | 650                                                     |
| October   | 650                                      | 650                                                     |
| November  | 650                                      | 650                                                     |
| December  | 650                                      | 650                                                     |

<sup>a</sup> Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 277-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

<sup>b</sup> Conditional Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for all target species of the upper Klamath Basin, and become effective only upon the re-introduction of anadromous fish. (Ex. 277-US-400 at II-8.)

# RIPARIAN HABITAT FLOWS<sup>c</sup>

| MONTH     | Riparian Habitat Base Flow (CFS) | Riparian Habitat High (Flood) Flow |                |
|-----------|----------------------------------|------------------------------------|----------------|
|           |                                  | Trigger Flow (CFS)                 | Cap Flow (CFS) |
| January   | --                               | --                                 | --             |
| February  | --                               | --                                 | --             |
| March     | 1100                             | 2180                               | 4190           |
| April     | 1430                             | 2180                               | 4190           |
| May       | 1300                             | 2180                               | 4190           |
| June      | 805                              | --                                 | --             |
| July      | 472                              | --                                 | --             |
| August    | 409                              | --                                 | --             |
| September | 433                              | --                                 | --             |
| October   | 488                              | --                                 | --             |
| November  | 604                              | --                                 | --             |
| December  | --                               | --                                 | --             |

<sup>c</sup> Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 277-US-300 at 54.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 277-US-300 at 82-83.)

**DATE OF PRIORITY:** TIME IMMEMORIAL

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

| WILLIAMSON RIVER FROM SPRAGUE RIVER CONFLUENCE TO HIGHWAY 97 |      |     |     |     |       |                                                    |                   |
|--------------------------------------------------------------|------|-----|-----|-----|-------|----------------------------------------------------|-------------------|
|                                                              | Twp  | Rng | Mer | Sec | Q-Q   | Coordinate Description (NAD 27)                    | Approx River Mile |
| Upper Reach Boundary                                         | 35 S | 7 E | WM  | 3   | NW NW | SOUTH 61° 20' 34" EAST, 996.8 FEET FROM NW CORNER  | 11                |
| Lower Reach Boundary                                         | 35 S | 7 E | WM  | 21  | SW NE | SOUTH 47° 12' 29" WEST, 3030.7 FEET FROM NE CORNER | 7                 |



**CLAIM NO. 627**

FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:** CLAIM # 627, PAGE 14, MYLAR MAP FILED OCTOBER 1, 1999**CLAIMANTS:** THE KLAMATH TRIBES  
PO BOX 436  
CHILOQUIN, OR 97624UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON  
BEHALF OF THE KLAMATH TRIBES  
911 NE 11<sup>TH</sup> AVE  
PORTLAND, OR 97232**SOURCE OF WATER:** The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE**PURPOSE or USE:**INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING,  
TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND**PERIODS OF ALLOWED USE AND RATES:**THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE  
STREAM REACH (OWRD WAB ID# 70827) TO PROTECT THE FOLLOWING FLOWS  
THOUGHOUT THE REACH:**PHYSICAL HABITAT FLOWS**

| MONTH     | Physical Habitat Flow <sup>a</sup> (CFS) | Conditional Physical<br>Habitat Flow <sup>b</sup> (CFS) |
|-----------|------------------------------------------|---------------------------------------------------------|
| January   | 420                                      | 420                                                     |
| February  | 420                                      | 420                                                     |
| March     | 420                                      | 420                                                     |
| April     | 420                                      | 420                                                     |
| May       | 420                                      | 420                                                     |
| June      | 420                                      | 420                                                     |
| July      | 357                                      | 357                                                     |
| August    | 357                                      | 357                                                     |
| September | 250                                      | 250                                                     |
| October   | 250                                      | 250                                                     |
| November  | 250                                      | 250                                                     |
| December  | 420                                      | 420                                                     |

<sup>a</sup> Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 277-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

<sup>b</sup> Conditional Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for all target species of the upper Klamath Basin, and become effective only upon the re-introduction of anadromous fish. (Ex. 277-US-400 at II-8.)

### RIPARIAN HABITAT FLOWS<sup>c</sup>

| MONTH     | Riparian Habitat Base Flow (CFS) | Riparian Habitat High (Flood) Flow |                |
|-----------|----------------------------------|------------------------------------|----------------|
|           |                                  | Trigger Flow (CFS)                 | Cap Flow (CFS) |
| January   | --                               | --                                 | --             |
| February  | --                               | --                                 | --             |
| March     | 550                              | 787                                | 1150           |
| April     | 578                              | 787                                | 1150           |
| May       | 442                              | 787                                | 1150           |
| June      | 335                              | --                                 | --             |
| July      | 259                              | --                                 | --             |
| August    | 243                              | --                                 | --             |
| September | 245                              | --                                 | --             |
| October   | 246                              | --                                 | --             |
| November  | 323                              | --                                 | --             |
| December  | --                               | --                                 | --             |

<sup>c</sup> Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 277-US-300 at 54.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 277-US-300 at 82-83.)

**DATE OF PRIORITY: TIME IMMEMORIAL**

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

| WILLIAMSON RIVER FROM SPRING CREEK TO THE SPRAGUE RIVER CONFLUENCE |      |     |     |     |       |                                                                |                   |
|--------------------------------------------------------------------|------|-----|-----|-----|-------|----------------------------------------------------------------|-------------------|
|                                                                    | Twp  | Rng | Mer | Sec | Q-Q   | Coordinate Description (NAD 27)                                | Approx River Mile |
| Upper Reach Boundary                                               | 34 S | 7 E | WM  | 9   | SE NE | SOUTH 1° 55' 54" EAST, 1937.7 FEET FROM NE <sup>a</sup> CORNER | 16.7              |
| Lower Reach Boundary                                               | 35 S | 7 E | WM  | 3   | NW NW | SOUTH 61° 20' 14" EAST, 997.3 FEET FROM NW CORNER              | 11                |

<sup>a</sup> The claim map incorrectly referenced the distance/bearing for the upper reach from the NW corner. (OWRD Ex. 5 at 5.)



**CLAIM NO. 628**

FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:** CLAIM # 628, PAGE 16, MYLAR MAP FILED OCTOBER 1, 1999**CLAIMANTS:** THE KLAMATH TRIBES  
PO BOX 436  
CHILOQUIN, OR 97624UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON  
BEHALF OF THE KLAMATH TRIBES  
911 NE 11<sup>TH</sup> AVE  
PORTLAND, OR 97232**SOURCE OF WATER:** The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE**PURPOSE or USE:**INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING,  
TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND**PERIODS OF ALLOWED USE AND RATES:**THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE  
STREAM REACH (OWRD WAB ID# 70825) TO PROTECT THE FOLLOWING FLOWS  
THROUGHOUT THE REACH:**PHYSICAL HABITAT FLOWS**

| MONTH     | Physical Habitat Flow <sup>a</sup> (CFS) | Conditional Physical<br>Habitat Flow <sup>b</sup> (CFS) |
|-----------|------------------------------------------|---------------------------------------------------------|
| January   | 110                                      | 110                                                     |
| February  | 110                                      | 110                                                     |
| March     | 110                                      | 110                                                     |
| April     | 110                                      | 110                                                     |
| May       | 100                                      | 100                                                     |
| June      | 100                                      | 100                                                     |
| July      | 87                                       | 87                                                      |
| August    | 46                                       | 46                                                      |
| September | 27                                       | 27                                                      |
| October   | 60                                       | 60                                                      |
| November  | 100                                      | 100                                                     |
| December  | 110                                      | 110                                                     |

<sup>a</sup> Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 277-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

<sup>b</sup> Conditional Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for all target species of the upper Klamath Basin, and become effective only upon the re-introduction of anadromous fish. (Ex. 277-US-400 at II-8.)

### RIPARIAN HABITAT FLOWS<sup>c</sup>

| MONTH     | Riparian Habitat Base Flow (CFS) | Riparian Habitat High (Flood) Flow |                |
|-----------|----------------------------------|------------------------------------|----------------|
|           |                                  | Trigger Flow (CFS)                 | Cap Flow (CFS) |
| January   | --                               | --                                 | --             |
| February  | --                               | --                                 | --             |
| March     | 350                              | 494                                | 835            |
| April     | 376                              | 494                                | 835            |
| May       | 240                              | 494                                | 835            |
| June      | 133                              | --                                 | --             |
| July      | 57                               | --                                 | --             |
| August    | 42                               | --                                 | --             |
| September | 45                               | --                                 | --             |
| October   | 46                               | --                                 | --             |
| November  | 123                              | --                                 | --             |
| December  | --                               | --                                 | --             |

<sup>c</sup> Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 277-US-300 at 54.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 277-US-300 at 82-83.)

**DATE OF PRIORITY:** TIME IMMEMORIAL

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

| WILLIAMSON RIVER FROM THE LOWER END OF KIRK CANYON TO SPRING CREEK |      |     |     |     |       |                                                    |                   |
|--------------------------------------------------------------------|------|-----|-----|-----|-------|----------------------------------------------------|-------------------|
|                                                                    | Twp  | Rng | Mer | Sec | Q-Q   | Coordinate Description (NAD 27)                    | Approx River Mile |
| Upper Reach Boundary                                               | 33 S | 7 E | WM  | 36  | SW NW | SOUTH 18° 34' 28" EAST, 1584.0 FEET FROM NW CORNER | 21.5              |
| Lower Reach Boundary                                               | 34 S | 7 E | WM  | 10  | SW NW | SOUTH 1° 55' 54" EAST, 1937.7 FEET FROM NW CORNER  | 16.7              |



**CLAIM NO. 629**

FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:**

CLAIM # 629, PAGES 18-19, MYLAR MAPS FILED OCTOBER 1, 1999

**CLAIMANTS:** THE KLAMATH TRIBES  
PO BOX 436  
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON  
BEHALF OF THE KLAMATH TRIBES  
911 NE 11<sup>TH</sup> AVE  
PORTLAND, OR 97232

**SOURCE OF WATER:** The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

**PURPOSE or USE:**

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING,  
TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

**PERIODS OF ALLOWED USE AND RATES:**

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE  
STREAM REACH (OWRD WAB ID# 31420148) TO PROTECT THE FOLLOWING FLOWS  
THROUGHOUT THE REACH:

**PHYSICAL HABITAT FLOWS**

| <b>MONTH</b> | <b>Physical Habitat Flow<sup>a</sup> (CFS)</b> |
|--------------|------------------------------------------------|
| January      | 100                                            |
| February     | 100                                            |
| March        | 100                                            |
| April        | 67                                             |
| May          | 67                                             |
| June         | 60                                             |
| July         | 60                                             |
| August       | 43                                             |
| September    | 27                                             |
| October      | 48                                             |
| November     | 55                                             |
| December     | 100                                            |

<sup>a</sup> Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 277-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

**RIPARIAN HABITAT BASE FLOWS<sup>b</sup>**

| MONTH     | Riparian Habitat Base Flow (CFS) |
|-----------|----------------------------------|
| January   | --                               |
| February  | --                               |
| March     | 329                              |
| April     | 357                              |
| May       | 223                              |
| June      | 117                              |
| July      | 43                               |
| August    | 29                               |
| September | 27                               |
| October   | 32                               |
| November  | 109                              |
| December  | --                               |

<sup>b</sup> Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 277-US-300 at 54.) The Riparian Base Flow values represent the minimum flows that must be maintained.

**DATE OF PRIORITY:** TIME IMMEMORIAL

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

| WILLIAMSON RIVER FROM THE TOWN OF KIRK TO LOWER END OF KIRK CANYON |      |     |     |     |       |                                                       |                      |
|--------------------------------------------------------------------|------|-----|-----|-----|-------|-------------------------------------------------------|----------------------|
|                                                                    | Twp  | Rng | Mer | Sec | Q-Q   | Coordinate Description (NAD 27)<br>(NAD 27)           | Approx<br>River Mile |
| Upper Reach<br>Boundary                                            | 33 S | 7 E | WM  | 1   | NE NW | SOUTH 84° 52' 25" EAST, 1679.5<br>FEET FROM NW CORNER | 28                   |
| Lower Reach<br>Boundary                                            | 33 S | 7 E | WM  | 36  | SW NW | SOUTH 18° 34' 28" EAST, 1584.0<br>FEET FROM NW CORNER | 21.5                 |



**CLAIM NO. 631**

FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:**

CLAIM # 631, PAGES 21-24, MYLAR MAPS FILED OCTOBER 1, 1999

**CLAIMANTS:** THE KLAMATH TRIBES  
PO BOX 436  
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON  
BEHALF OF THE KLAMATH TRIBES  
911 NE 11<sup>TH</sup> AVE  
PORTLAND, OR 97232

**SOURCE OF WATER:** The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

**PURPOSE or USE:**

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING,  
TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

**PERIODS OF ALLOWED USE AND RATES:**

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE  
STREAM REACH (OWRD WAB ID# 31420127) TO PROTECT THE FOLLOWING FLOWS  
THOUGHOUT THE REACH:

**PHYSICAL HABITAT FLOWS**

| MONTH     | Physical Habitat Flow <sup>a</sup> (CFS) |
|-----------|------------------------------------------|
| January   | 70                                       |
| February  | 59                                       |
| March     | 59                                       |
| April     | 59                                       |
| May       | 59                                       |
| June      | 90                                       |
| July      | 74                                       |
| August    | 64                                       |
| September | 64                                       |
| October   | 66                                       |
| November  | 68                                       |
| December  | 70                                       |

<sup>a</sup> Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 277-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

# **RIPARIAN HABITAT FLOWS<sup>b</sup>**

| MONTH     | Riparian Habitat Base Flow (CFS) | Riparian Habitat High (Flood) Flow |                |
|-----------|----------------------------------|------------------------------------|----------------|
|           |                                  | Trigger Flow (CFS)                 | Cap Flow (CFS) |
| January   | --                               | --                                 | --             |
| February  | --                               | --                                 | --             |
| March     | 64                               | 150                                | 150            |
| April     | 92                               | 150                                | 150            |
| May       | 108                              | 150                                | 150            |
| June      | 87                               | --                                 | --             |
| July      | 51                               | --                                 | --             |
| August    | 43                               | --                                 | --             |
| September | 45                               | --                                 | --             |
| October   | 48                               | --                                 | --             |
| November  | 48                               | --                                 | --             |
| December  | --                               | --                                 | --             |

<sup>b</sup> Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 277-US-300 at 54.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 277-US-300 at 82-83.)

**DATE OF PRIORITY:** TIME IMMEMORIAL

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

| WILLIAMSON RIVER FROM DEEP CREEK TO KLAMATH MARSH |      |      |     |     |       |                                                   |                   |
|---------------------------------------------------|------|------|-----|-----|-------|---------------------------------------------------|-------------------|
|                                                   | Twp  | Rng  | Mer | Sec | Q-Q   | Coordinate Description (NAD 27)                   | Approx River Mile |
| Upper Reach Boundary                              | 31 S | 11 E | WM  | 31  | NW NW | SOUTH 21° 33' 6" EAST, 1558.4 FEET FROM NW CORNER | 80                |
| Lower Reach Boundary                              | 30 S | 10 E | WM  | 16  | NW NW | SOUTH 37° 9' 19" EAST, 1554.0 FEET FROM NW CORNER | 60                |



**CLAIM NO. 632**

FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:** CLAIM # 632, PAGE 15, MYLAR MAP FILED OCTOBER 1, 1999**CLAIMANTS:** THE KLAMATH TRIBES  
PO BOX 436  
CHILOQUIN, OR 97624UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON  
BEHALF OF THE KLAMATH TRIBES  
911 NE 11<sup>TH</sup> AVE  
PORTLAND, OR 97232**SOURCE OF WATER:** The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE**PURPOSE or USE:**INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING,  
TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND**PERIODS OF ALLOWED USE AND RATES:**THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE  
STREAM REACH (OWRD WAB ID# 31420115) TO PROTECT THE FOLLOWING FLOWS  
THROUGHOUT THE REACH:**PHYSICAL HABITAT FLOWS**

| <b>MONTH</b> | <b>Physical Habitat Flow<sup>a</sup> (CFS)</b> |
|--------------|------------------------------------------------|
| January      | 52                                             |
| February     | 58                                             |
| March        | 58                                             |
| April        | 58                                             |
| May          | 58                                             |
| June         | 52                                             |
| July         | 52                                             |
| August       | 52                                             |
| September    | 52                                             |
| October      | 52                                             |
| November     | 52                                             |
| December     | 52                                             |

<sup>a</sup> Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 277-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

# **RIPARIAN HABITAT BASE FLOWS<sup>b</sup>**

| MONTH     | Riparian Habitat Base Flow (CFS) |
|-----------|----------------------------------|
| January   | --                               |
| February  | --                               |
| March     | 42                               |
| April     | 59                               |
| May       | 56                               |
| June      | 50                               |
| July      | 39                               |
| August    | 36                               |
| September | 37                               |
| October   | 38                               |
| November  | 40                               |
| December  | --                               |

<sup>b</sup> Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 277-US-300 at 54.) The Riparian Base Flow values represent the minimum flows that must be maintained.

**DATE OF PRIORITY:** TIME IMMEMORIAL

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

| WILLIAMSON RIVER FROM WICKIUP SPRING TO DEEP CREEK |      |      |     |     |       |                                                    |                   |
|----------------------------------------------------|------|------|-----|-----|-------|----------------------------------------------------|-------------------|
|                                                    | Twp  | Rng  | Mer | Sec | Q-Q   | Coordinate Description (NAD 27)                    | Approx River Mile |
| Upper Reach Boundary                               | 32 S | 11 E | WM  | 17  | NE SW | NORTH 38° 28' 32" EAST, 3176.1 FEET FROM SW CORNER | 86.5              |
| Lower Reach Boundary                               | 31 S | 11 E | WM  | 31  | NW NW | SOUTH 21° 33' 6" EAST, 1558.4 FEET FROM NW CORNER  | 80                |



**CLAIM NO. 633**

FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:** CLAIM # 633, PAGE 15, MYLAR MAP FILED OCTOBER 1, 1999**CLAIMANTS:** THE KLAMATH TRIBES  
PO BOX 436  
CHILOQUIN, OR 97624UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON  
BEHALF OF THE KLAMATH TRIBES  
911 NE 11<sup>TH</sup> AVE  
PORTLAND, OR 97232**SOURCE OF WATER:** The WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE**PURPOSE or USE:**INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING,  
TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND**PERIODS OF ALLOWED USE AND RATES:**THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE  
STREAM REACH (OWRD WAB ID# 31420128) TO PROTECT THE FOLLOWING FLOWS  
THROUGHOUT THE REACH:**PHYSICAL HABITAT FLOWS**

| MONTH     | Physical Habitat Flow <sup>a</sup> (CFS) |
|-----------|------------------------------------------|
| January   | 10                                       |
| February  | 10                                       |
| March     | 14                                       |
| April     | 14                                       |
| May       | 14                                       |
| June      | 13                                       |
| July      | 10                                       |
| August    | 10                                       |
| September | 13                                       |
| October   | 13                                       |
| November  | 13                                       |
| December  | 10                                       |

<sup>a</sup> Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 277-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

**RIPARIAN HABITAT BASE FLOWS<sup>b</sup>**

| MONTH     | Riparian Habitat Base Flow (CFS) |
|-----------|----------------------------------|
| January   | --                               |
| February  | --                               |
| March     | 26                               |
| April     | 35                               |
| May       | 33                               |
| June      | 31                               |
| July      | 24                               |
| August    | 22                               |
| September | 23                               |
| October   | 24                               |
| November  | 25                               |
| December  | --                               |

<sup>b</sup> Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 277-US-300 at 54.) The Riparian Base Flow values represent the minimum flows that must be maintained.

**DATE OF PRIORITY:** TIME IMMEMORIAL

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

| WILLIAMSON RIVER FROM CAMPGROUND SPRINGS TO WICKIUP SPRING |      |      |     |     |       |                                                    |                   |
|------------------------------------------------------------|------|------|-----|-----|-------|----------------------------------------------------|-------------------|
|                                                            | Twp  | Rng  | Mer | Sec | Q-Q   | Coordinate Description (NAD 27)                    | Approx River Mile |
| Upper Reach Boundary                                       | 33 S | 11 E | WM  | 9   | NE NW | SOUTH 89° 4' 49" EAST, 2626 FEET FROM NW CORNER    | 95+               |
| Lower Reach Boundary                                       | 32 S | 11 E | WM  | 17  | NE SW | NORTH 38° 28' 32" EAST, 3176.1 FEET FROM SW CORNER | 86.5              |



**CLAIM NO. 634**

FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:** CLAIM # 634, PAGE 15, MYLAR MAP FILED OCTOBER 1, 1999**CLAIMANTS:** THE KLAMATH TRIBES  
PO BOX 436  
CHILOQUIN, OR 97624UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON  
BEHALF OF THE KLAMATH TRIBES  
911 NE 11<sup>TH</sup> AVE  
PORTLAND, OR 97232**SOURCE OF WATER:** LARKIN CREEK, tributary to the WILLIAMSON RIVER**PURPOSE or USE:**INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING,  
TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND**PERIODS OF ALLOWED USE AND RATES:**THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE  
STREAM REACH (OWRD WAB ID# 31420129) TO PROTECT THE FOLLOWING FLOWS  
THOUGHOUT THE REACH:**PHYSICAL HABITAT FLOWS**

| MONTH     | Physical Habitat Flow <sup>a</sup> (CFS) | Conditional Physical<br>Habitat Flow <sup>b</sup> (CFS) |
|-----------|------------------------------------------|---------------------------------------------------------|
| January   | 8                                        | 8                                                       |
| February  | 10                                       | 10                                                      |
| March     | 13                                       | 13                                                      |
| April     | 13                                       | 13                                                      |
| May       | 13                                       | 13                                                      |
| June      | 13                                       | 13                                                      |
| July      | 11                                       | 11                                                      |
| August    | 10                                       | 10                                                      |
| September | 11                                       | 11                                                      |
| October   | 9                                        | 9                                                       |
| November  | 8                                        | 8                                                       |
| December  | 8                                        | 8                                                       |

<sup>a</sup> Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 277-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

<sup>b</sup> Conditional Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for all target species of the upper Klamath Basin, and become effective only upon the re-introduction of anadromous fish. (Ex. 277-US-400 at II-8.)

**RIPARIAN HABITAT BASE FLOWS <sup>c</sup>**

| MONTH     | Riparian Habitat Base Flow (CFS) |
|-----------|----------------------------------|
| January   | --                               |
| February  | --                               |
| March     | 12.0                             |
| April     | 11.0                             |
| May       | 11.0                             |
| June      | 9.4                              |
| July      | 7.5                              |
| August    | 7.3                              |
| September | 7.4                              |
| October   | 7.5                              |
| November  | 7.5                              |
| December  | --                               |

<sup>c</sup> Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 277-US-300 at 54.) The Riparian Base Flow values represent the minimum flows that must be maintained.

**DATE OF PRIORITY:** TIME IMMEMORIAL

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

| LARKIN CREEK FROM LARKIN CREEK SOURCE TO THE WILLIAMSON RIVER @ RM 19.4 |      |     |     |     |       |                                                    |                   |
|-------------------------------------------------------------------------|------|-----|-----|-----|-------|----------------------------------------------------|-------------------|
|                                                                         | Twp  | Rng | Mer | Sec | Q-Q   | Coordinate Description (NAD 27)                    | Approx River Mile |
| Upper Reach Boundary                                                    | 34 S | 7 E | WM  | 11  | SW SW | NORTH 68° 23' 15" EAST, 1272.6 FEET FROM SW CORNER | 2.5               |
| Lower Reach Boundary                                                    | 34 S | 7 E | WM  | 3   | NE SE | NORTH 15° 28' 39" WEST, 2192.4 FEET FROM SE CORNER | 0                 |



**CLAIM NO. 635**

FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:**

CLAIM # 635, PAGES 21-24, MYLAR MAPS FILED OCTOBER 1, 1999

**CLAIMANTS:** THE KLAMATH TRIBES  
PO BOX 436  
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON  
BEHALF OF THE KLAMATH TRIBES  
911 NE 11<sup>TH</sup> AVE  
PORTLAND, OR 97232

**SOURCE OF WATER:** SAND CREEK, tributary to the KLAMATH MARSH

**PURPOSE or USE:**

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING,  
TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

**PERIODS OF ALLOWED USE AND RATES:**

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE  
STREAM REACH (OWRD WAB ID# 31420102) TO PROTECT THE FOLLOWING FLOWS  
THROUGHOUT THE REACH:

**PHYSICAL HABITAT FLOWS**

| <b>MONTH</b> | <b>Physical Habitat Flow<sup>a</sup> (CFS)</b> |
|--------------|------------------------------------------------|
| January      | 18                                             |
| February     | 17                                             |
| March        | 18                                             |
| April        | 23                                             |
| May          | 39                                             |
| June         | 33                                             |
| July         | 33                                             |
| August       | 30                                             |
| September    | 28                                             |
| October      | 22                                             |
| November     | 20                                             |
| December     | 19                                             |

<sup>a</sup> Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 277-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

# **RIPARIAN HABITAT FLOWS<sup>b</sup>**

| MONTH     | Riparian Habitat Base Flow (CFS) | Riparian Habitat High (Flood) Flow |                |
|-----------|----------------------------------|------------------------------------|----------------|
|           |                                  | Trigger Flow (CFS)                 | Cap Flow (CFS) |
| January   | --                               | --                                 | --             |
| February  | --                               | --                                 | --             |
| March     | 12                               | 187                                | 310            |
| April     | 15                               | 187                                | 310            |
| May       | 27                               | 187                                | 310            |
| June      | 42                               | 187                                | 310            |
| July      | 34                               | --                                 | --             |
| August    | 20                               | --                                 | --             |
| September | 18                               | --                                 | --             |
| October   | 15                               | --                                 | --             |
| November  | 13                               | --                                 | --             |
| December  | --                               | --                                 | --             |

<sup>b</sup> Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 277-US-300 at 54.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 277-US-300 at 82-83.)

**DATE OF PRIORITY: TIME IMMEMORIAL**

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

| SAND CREEK FROM THE WESTERN EDGE OF THE FORMER KLAMATH INDIAN RESERVATION BOUNDARY TO THE KLAMATH MARSH |      |     |     |     |       |                                                  |                   |
|---------------------------------------------------------------------------------------------------------|------|-----|-----|-----|-------|--------------------------------------------------|-------------------|
|                                                                                                         | Twp  | Rng | Mer | Sec | Q-Q   | Coordinate Description (NAD 27)                  | Approx River Mile |
| Upper Reach Boundary                                                                                    | 31 S | 7 E | WM  | 31  | SE NE | SOUTH 37° 15' 2" WEST, 2551 FEET FROM NE CORNER  | 8                 |
| Lower Reach Boundary                                                                                    | 31 S | 8 E | WM  | 18  | SW SE | SOUTH 89° 57' 32" WEST, 2512 FEET FROM SE CORNER | 0                 |



**CLAIM NO. 636**

FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:**

CLAIM # 636, PAGES 17-18, MYLAR MAPS FILED OCTOBER 1, 1999

**CLAIMANTS:** THE KLAMATH TRIBES  
PO BOX 436  
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON  
BEHALF OF THE KLAMATH TRIBES  
911 NE 11<sup>TH</sup> AVE  
PORTLAND, OR 97232

**SOURCE OF WATER:** SCOTT CREEK, tributary to the KLAMATH MARSH

**PURPOSE or USE:**

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING,  
TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

**PERIODS OF ALLOWED USE AND RATES:**

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE  
STREAM REACH (OWRD WAB ID# 31420105) TO PROTECT THE FOLLOWING FLOWS  
THROUGHOUT THE REACH:

**PHYSICAL HABITAT FLOWS**

| <b>MONTH</b> | <b>Physical Habitat Flow<sup>a</sup> (CFS)</b> |
|--------------|------------------------------------------------|
| January      | 7.8                                            |
| February     | 7.5                                            |
| March        | 7.6                                            |
| April        | 9.3                                            |
| May          | 9.3                                            |
| June         | 15.0                                           |
| July         | 15.0                                           |
| August       | 14.0                                           |
| September    | 12.0                                           |
| October      | 9.3                                            |
| November     | 8.3                                            |
| December     | 8.7                                            |

<sup>a</sup> Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 277-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

# **RIPARIAN HABITAT FLOWS<sup>b</sup>**

| MONTH     | Riparian Habitat Base Flow (CFS) | Riparian Habitat High (Flood) Flow |                |
|-----------|----------------------------------|------------------------------------|----------------|
|           |                                  | Trigger Flow (CFS)                 | Cap Flow (CFS) |
| January   | --                               | --                                 | --             |
| February  | --                               | --                                 | --             |
| March     | 5.0                              | 91                                 | 110            |
| April     | 7.1                              | 91                                 | 110            |
| May       | 18.0                             | 91                                 | 110            |
| June      | 25.0                             | 91                                 | 110            |
| July      | 17.0                             | --                                 | --             |
| August    | 9.2                              | --                                 | --             |
| September | 8.1                              | --                                 | --             |
| October   | 6.2                              | --                                 | --             |
| November  | 5.5                              | --                                 | --             |
| December  | --                               | --                                 | --             |

<sup>b</sup> Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 277-US-300 at 54.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 277-US-300 at 82-83.)

**DATE OF PRIORITY: TIME IMMEMORIAL**

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

| SCOTT CREEK FROM THE WESTERN EDGE OF THE FORMER KLAMATH INDIAN RESERVATION BOUNDARY TO THE KLAMATH MARSH |      |     |     |     |       |                                                  |                   |
|----------------------------------------------------------------------------------------------------------|------|-----|-----|-----|-------|--------------------------------------------------|-------------------|
|                                                                                                          | Twp  | Rng | Mer | Sec | Q-Q   | Coordinate Description (NAD 27)                  | Approx River Mile |
| Upper Reach Boundary                                                                                     | 31 S | 7 E | WM  | 18  | SE NE | SOUTH 32° 37' 18" WEST, 3080 FEET FROM NE CORNER | 7.1               |
| Lower Reach Boundary                                                                                     | 31 S | 7 E | WM  | 1   | NE SE | NORTH 17° 31' 36" WEST, 2591 FEET FROM SE CORNER | 0                 |



**CLAIM NO. 637**

FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:**

CLAIM # 637, PAGES 17-18, MYLAR MAPS FILED OCTOBER 1, 1999

**CLAIMANTS:** THE KLAMATH TRIBES  
PO BOX 436  
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON  
BEHALF OF THE KLAMATH TRIBES  
911 NE 11<sup>TH</sup> AVE  
PORTLAND, OR 97232

**SOURCE OF WATER:** JACKSON CREEK, tributary to the WILLIAMSON RIVER

**PURPOSE or USE:**

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING,  
TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

**PERIODS OF ALLOWED USE AND RATES:**

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE  
STREAM REACH (OWRD WAB ID# 31420112) TO PROTECT THE FOLLOWING FLOWS  
THOUGHOUT THE REACH:

**PHYSICAL HABITAT FLOWS**

| MONTH     | Physical Habitat Flow <sup>a</sup> (CFS) |
|-----------|------------------------------------------|
| January   | 8.5                                      |
| February  | 9.0                                      |
| March     | 9.0                                      |
| April     | 14.0                                     |
| May       | 22.0                                     |
| June      | 15.0                                     |
| July      | 6.4                                      |
| August    | 4.7                                      |
| September | 4.9                                      |
| October   | 5.5                                      |
| November  | 6.2                                      |
| December  | 7.3                                      |

<sup>a</sup> Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 277-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

# RIPARIAN HABITAT FLOWS<sup>b</sup>

| MONTH     | Riparian Habitat Base Flow (CFS) | Riparian Habitat High (Flood) Flow |                |
|-----------|----------------------------------|------------------------------------|----------------|
|           |                                  | Trigger Flow (CFS)                 | Cap Flow (CFS) |
| January   | --                               | --                                 | --             |
| February  | --                               | --                                 | --             |
| March     | 8.8                              | 96                                 | 160            |
| April     | 13.0                             | 96                                 | 160            |
| May       | 16.0                             | 96                                 | 160            |
| June      | 10.0                             | 96                                 | 160            |
| July      | 4.2                              | --                                 | --             |
| August    | 3.1                              | --                                 | --             |
| September | 3.2                              | --                                 | --             |
| October   | 3.6                              | --                                 | --             |
| November  | 4.1                              | --                                 | --             |
| December  | --                               | --                                 | --             |

<sup>b</sup> Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 277-US-300 at 54.) The Riparian Base Flow values represent the minimum flows that must be maintained unless a Riparian Habitat High (Flood) Flow is triggered. Riparian Habitat High (Flood) Flows are triggered by the 1.5-year recurrence interval flow and capped by the 3.4-year recurrence interval flow. If stream flows are at or above the Trigger Flow, stream flows must be maintained up to the Cap Flow. If the stream flow drops below the Trigger Flow, then stream flows are once again maintained at the Riparian Habitat Base Flow. (Ex. 277-US-300 at 82-83.)

**DATE OF PRIORITY:** TIME IMMEMORIAL

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

| JACKSON CREEK FROM JACKSON CREEK SOURCE TO THE WILLIAMSON RIVER @ RM 64.4 |      |      |     |     |       |                                                    |                   |
|---------------------------------------------------------------------------|------|------|-----|-----|-------|----------------------------------------------------|-------------------|
|                                                                           | Twp  | Rng  | Mer | Sec | Q-Q   | Coordinate Description (NAD 27)                    | Approx River Mile |
| Upper Reach Boundary                                                      | 30 S | 11 E | WM  | 25  | NW NE | SOUTH 64° 33' 54" WEST, 2019.8 FEET FROM NE CORNER | 9.8               |
| Lower Reach Boundary                                                      | 30 S | 10 E | WM  | 23  | SE NE | SOUTH 26° 52' 58" WEST, 1647.4 FEET FROM NE CORNER | 0                 |



**CLAIM NO. 638**

FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:** CLAIM # 638, PAGE 15, MYLAR MAP FILED OCTOBER 1, 1999**CLAIMANTS:** THE KLAMATH TRIBES  
PO BOX 436  
CHILOQUIN, OR 97624UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON  
BEHALF OF THE KLAMATH TRIBES  
911 NE 11<sup>TH</sup> AVE  
PORTLAND, OR 97232**SOURCE OF WATER:** IRVING CREEK, tributary to JACKSON CREEK**PURPOSE or USE:**INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING,  
TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND**PERIODS OF ALLOWED USE AND RATES:**THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE  
STREAM REACH (OWRD WAB ID# 31420130) TO PROTECT THE FOLLOWING FLOWS  
THROUGHOUT THE REACH:**PHYSICAL HABITAT FLOWS**

| MONTH     | Physical Habitat Flow <sup>a</sup> (CFS) |
|-----------|------------------------------------------|
| January   | 2.0                                      |
| February  | 2.0                                      |
| March     | 2.0                                      |
| April     | 2.0                                      |
| May       | 2.0                                      |
| June      | 2.0                                      |
| July      | 2.0                                      |
| August    | 1.7                                      |
| September | 1.7                                      |
| October   | 1.8                                      |
| November  | 2.0                                      |
| December  | 2.0                                      |

<sup>a</sup> Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 277-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

**RIPARIAN HABITAT BASE FLOWS<sup>b</sup>**

| MONTH     | Riparian Habitat Base Flow (CFS) |
|-----------|----------------------------------|
| January   | --                               |
| February  | --                               |
| March     | 2.0                              |
| April     | 2.0                              |
| May       | 2.0                              |
| June      | 2.0                              |
| July      | 1.4                              |
| August    | 1.1                              |
| September | 1.1                              |
| October   | 1.2                              |
| November  | 1.4                              |
| December  | --                               |

<sup>b</sup> Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. Riparian Habitat Base Flow values represent the minimum flows that must be maintained.

**DATE OF PRIORITY:** TIME IMMEMORIAL

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

| IRVING CREEK FROM IRVING CREEK SOURCE TO JACKSON CREEK |      |      |     |     |       |                                                   |                   |
|--------------------------------------------------------|------|------|-----|-----|-------|---------------------------------------------------|-------------------|
|                                                        | Twp  | Rng  | Mer | Sec | Q-Q   | Coordinate Description (NAD 27)                   | Approx River Mile |
| Upper Reach Boundary                                   | 30 S | 11 E | WM  | 20  | SW SW | SOUTH 64° 5' 36" EAST, 1027.1 FEET FROM SW CORNER | 2                 |
| Lower Reach Boundary                                   | 30 S | 10 E | WM  | 13  | SE SW | NORTH 87° 6' 46" EAST, 2191.5 FEET FROM SW CORNER | 0                 |



**CLAIM NO. 639**

FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:**

CLAIM # 639, PAGES 19-21, MYLAR MAPS FILED OCTOBER 1, 1999

**CLAIMANTS:** THE KLAMATH TRIBES  
PO BOX 436  
CHILOQUIN, OR 97624

UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON  
BEHALF OF THE KLAMATH TRIBES  
911 NE 11<sup>TH</sup> AVE  
PORTLAND, OR 97232

**SOURCE OF WATER:** DEEP CREEK, tributary to the WILLIAMSON RIVER

**PURPOSE or USE:**

INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING,  
TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND

**PERIODS OF ALLOWED USE AND RATES:**

THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE  
STREAM REACH (OWRD WAB ID# 31420131) TO PROTECT THE FOLLOWING FLOWS  
THROUGHOUT THE REACH:

**PHYSICAL HABITAT FLOWS**

| MONTH     | Physical Habitat Flow <sup>a</sup> (CFS) |
|-----------|------------------------------------------|
| January   | 2.8                                      |
| February  | 3.4                                      |
| March     | 5.2                                      |
| April     | 5.4                                      |
| May       | 5.4                                      |
| June      | 7.9                                      |
| July      | 2.2                                      |
| August    | 1.4                                      |
| September | 1.5                                      |
| October   | 1.8                                      |
| November  | 2.0                                      |
| December  | 2.3                                      |

<sup>a</sup> Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 277-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

**RIPARIAN HABITAT BASE FLOWS<sup>b</sup>**

| MONTH     | Riparian Habitat Base Flow (CFS) |
|-----------|----------------------------------|
| January   | --                               |
| February  | --                               |
| March     | 3.4                              |
| April     | 7.1                              |
| May       | 10.0                             |
| June      | 5.2                              |
| July      | 1.4                              |
| August    | 0.9                              |
| September | 0.97                             |
| October   | 1.2                              |
| November  | 1.3                              |
| December  | --                               |

<sup>b</sup> Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 277-US-300 at 54.) The Riparian Base Flow values represent the minimum flows that must be maintained.

**DATE OF PRIORITY:** TIME IMMEMORIAL

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

| DEEP CREEK FROM DEEP CREEK SOURCE TO THE WILLIAMSON RIVER @ RM 80 |      |      |     |     |       |                                                    |                   |
|-------------------------------------------------------------------|------|------|-----|-----|-------|----------------------------------------------------|-------------------|
|                                                                   | Twp  | Rng  | Mer | Sec | Q-Q   | Coordinate Description (NAD 27)                    | Approx River Mile |
| Upper Reach Boundary                                              | 31 S | 11 E | WM  | 1   | SW NE | SOUTH 43° 57' 40" WEST, 2594.7 FEET FROM NE CORNER | 9.5               |
| Lower Reach Boundary                                              | 31 S | 11 E | WM  | 31  | NW NW | SOUTH 21° 33' 6" EAST, 1558.4 FEET FROM NW CORNER  | 0                 |



**CLAIM NO. 640**

FOR A VESTED WATER RIGHT

**CLAIM MAP REFERENCE:** CLAIM # 640, PAGE 15, MYLAR MAP FILED OCTOBER 1, 1999**CLAIMANTS:** THE KLAMATH TRIBES  
PO BOX 436  
CHILOQUIN, OR 97624UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS AS TRUSTEE ON  
BEHALF OF THE KLAMATH TRIBES  
911 NE 11<sup>TH</sup> AVE  
PORTLAND, OR 97232**SOURCE OF WATER:** SPRING CREEK, tributary to the WILLIAMSON RIVER**PURPOSE or USE:**INSTREAM USE TO PRESERVE AND PROTECT THE TRIBES' HUNTING, FISHING,  
TRAPPING AND GATHERING RIGHTS ON FORMER RESERVATION LAND**PERIODS OF ALLOWED USE AND RATES:**THE INSTREAM FLOWS ARE TO BE MEASURED AT THE LOWER END OF THE  
STREAM REACH (OWRD WAB ID# 70818) TO PROTECT THE FOLLOWING FLOWS  
THROUGHOUT THE REACH:**PHYSICAL HABITAT FLOWS**

| MONTH     | Physical Habitat Flow <sup>a</sup> (CFS) | Conditional Physical<br>Habitat Flow <sup>b</sup> (CFS) |
|-----------|------------------------------------------|---------------------------------------------------------|
| January   | 220                                      | 220                                                     |
| February  | 220                                      | 220                                                     |
| March     | 220                                      | 220                                                     |
| April     | 220                                      | 220                                                     |
| May       | 220                                      | 220                                                     |
| June      | 220                                      | 220                                                     |
| July      | 220                                      | 220                                                     |
| August    | 220                                      | 220                                                     |
| September | 200                                      | 303                                                     |
| October   | 220                                      | 303                                                     |
| November  | 220                                      | 302                                                     |
| December  | 220                                      | 220                                                     |

<sup>a</sup> Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for species occurring in the upper Klamath Basin today. (Ex. 277-US-400 at II-8.) The Physical Habitat Flow values represent the minimum flows that must be maintained.

<sup>b</sup> Conditional Physical Habitat Flows are those that are necessary to provide for the health and productivity of fish habitat for all target species of the upper Klamath Basin, and become effective only upon the re-introduction of anadromous fish. (Ex. 277-US-400 at II-8.)

**RIPARIAN HABITAT BASE FLOWS <sup>c</sup>**

| MONTH     | Riparian Habitat Base Flow (CFS) |
|-----------|----------------------------------|
| January   | --                               |
| February  | --                               |
| March     | 199                              |
| April     | 201                              |
| May       | 202                              |
| June      | 202                              |
| July      | 201                              |
| August    | 201                              |
| September | 200                              |
| October   | 200                              |
| November  | 199                              |
| December  | --                               |

<sup>c</sup> Riparian Habitat Base Flow refers to the stream flow that is needed by plant species present in riparian habitat to maintain their adequate survival and growth during the growing season. (Ex. 277-US-300 at 54.) The Riparian Base Flow values represent the minimum flows that must be maintained.

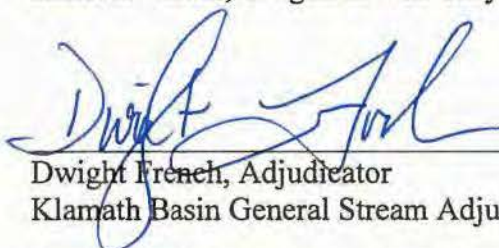
**DATE OF PRIORITY:** TIME IMMEMORIAL

**THE PLACE OF USE IS LOCATED AS FOLLOWS:**

| SPRING CREEK FROM SPRING CREEK SOURCE TO WILLIAMSON RIVER@ RM 16.8 |      |     |     |     |       |                                                    |                   |
|--------------------------------------------------------------------|------|-----|-----|-----|-------|----------------------------------------------------|-------------------|
|                                                                    | Twp  | Rng | Mer | Sec | Q-Q   | Coordinate Description (NAD 27)                    | Approx River Mile |
| Upper Reach Boundary                                               | 33 S | 7 E | WM  | 33  | SW NE | SOUTH 34° 54' 17" WEST, 3158.2 FEET FROM NE CORNER | 2.5               |
| Lower Reach Boundary                                               | 34 S | 7 E | WM  | 9   | SE NE | SOUTH 1° 7' 21" EAST, 1867 FEET FROM NE CORNER     | 0                 |

[End of Water Right Claim Description]

Dated at Salem, Oregon on February 28, 2014

  
Dwight French, Adjudicator  
Klamath Basin General Stream Adjudication

CORRECTED PARTIAL ORDER OF DETERMINATION  
CLAIMS 625-640 (Williamson River and its tributaries)

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